

IN THE UNITED STATES DISTRICT COURT FOR THE  
EASTERN DISTRICT OF VIRGINIA  
Alexandria Division

UNITED STATES OF AMERICA,

Plaintiff,

vs.

PEDRO ANTHONY ROMERO CRUZ,  
JOSE LOPEZ TORRES,  
JAIME ROSALES VILLEGAS,  
ALVIN GAITAN BENITEZ,  
CHRISTIAN LEMUS CERNA,  
OMAR DEJESUS CASTILLO,  
DOUGLAS DURAN CERRITOS,  
MANUEL ERNESTO PAIZ,  
JOSE DEL CID,  
JESUS ALEJANDRO CHAVEZ,  
JUAN CARLOS MARQUEZ AYALA,  
ARAELY SANTIAGO VALLANUEVA,  
GENARO SEN GARCIA,

Defendants.

CR. NO. 14-cr-306

September 15, 2015

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BEFORE: THE HONORABLE GERALD BRUCE LEE  
UNITED STATES DISTRICT JUDGE

OFFICIAL COURT REPORTER: RENECIA A. WILSON, RMR, CRR  
401 Courthouse Square, 5th FL  
Alexandria, VA 22314  
(703)501-1580

APPEARANCES:

FOR THE GOVERNMENT: OFFICE OF THE UNITED STATES ATTORNEY  
BY: TOBIAS TOBLER, ESQ.  
STEPHEN CAMPBELL, ESQ.  
JULIA MARTINEZ, ESQ.

FOR THE DEFENDANTS: CHARLES BURNHAM, ESQ.  
(For Pedro Romero Cruz)

ROBERT JENKINS, ESQ.  
(For Jose Lopez Torres)

GRETCHEN TAYLOR, ESQ.  
(For Jaime Rosales Villegas)

JEFFREY ZIMMERMAN, ESQ.  
(For Alvin Gaitan Benitez)

FRANK SALVATO, ESQ.  
KEVA MCDONALD, ESQ.  
(For Christian Lemus Cerna)

KATHERINE MARTELL, ESQ.  
MEREDITH RALLS, ESQ.  
(For Omar Dejesus Castillo)

DWIGHT CRAWLEY, ESQ.  
JOHN ROCKECHARLIE, ESQ.  
(For Douglas Duran Cerritos)

DAVID BAUGH, ESQ.  
MICHAEL CHICK, ESQ.  
(For Manuel Ernesto Paiz Guevara)

ELITA AMATO, ESQ.  
JEROME AQUINO, ESQ.  
(For Jesus Alejandro Chavez)

PLEASANT BRODNAX, ESQ.  
DANIEL LOPEZ, ESQ.  
(For Juan Carlos Marquez Ayala)

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1 (Thereupon, the following was heard in open  
2 court at 10:22 a.m.)

3 THE CLERK: 1:14 criminal 306, United States  
4 versus Pedro Anthony Romero Cruz.

5 And where is Mr. Burnham?

6 MR. BURNHAM: Right here.

7 THE CLERK: Mr. Burnham, does your client  
8 waive his appearance?

9 MR. BURNHAM: He does. I have a written  
10 waiver I can hand up with the assistance of the court  
11 security.

12 THE COURT: All right.

13 MR. BURNHAM: I've shared it with the  
14 government.

15 THE COURT: The record should reflect that  
16 Mr. Pedro Anthony Romero Cruz is not present and has  
17 waived his appearance in writing which will be made a  
18 part of the record.

19 Before we go further, let's swear the  
20 interpreters, please.

21 Good morning.

22 THE CLERK: Three interpreter.

23 THE COURT: Ms. Anna Lefèvre, Ms. Angeles  
24 Estrada and Ms. Maria Horvath, will you act as  
25 interpreters for us today?

1 THE INTERPRETERS: Yes, Your Honor.

2 THE COURT: If you would take the oath from  
3 the clerk, please.

4 (Interpreters duly sworn.)

5 THE INTERPRETER: I do for the record, Anna  
6 Lurina Lefèvre, federally certified court interpreter.

7 THE INTERPRETER: Angeles Estrada, also  
8 certified as well.

9 THE INTERPRETER: Maria Horvath, also  
10 federally certified.

11 THE CLERK: And United States also versus  
12 Jose Lopez Torres, Jaime Rosales Villegas, Alvin Gaitan  
13 Benitez, Christian Lemus Cerna, Omar Dejesus Castillo,  
14 Douglas Duran Cerritos, Manuel Ernesto Paiz Guevara.  
15 Jose Del Cid, Jesus Alejandro Chavez, Juan Carlos Marquez  
16 Ayala, Araely Santiago Villanueva, Genaro Sen Garcia.

17 THE COURT: All right, counsel enter your  
18 appearances, please. Good morning.

19 MR. TOBLER: Good morning, Your Honor.  
20 Tobias Tobler, Stephen Campbell and Julia Martinez for  
21 the United States.

22 MR. CAMPBELL: Good morning, Your Honor.

23 MS. MARTINEZ: Good morning, Your Honor.

24 MR. BURNHAM: Good morning again, Your Honor.  
25 Charles Burnham here on behalf of Romero Cruz.

1 THE COURT: Good morning.

2 MS. AMATO: Good morning, Your Honor. Elita  
3 Amato and Jerome Aquino on behalf of Mr. Chavez who is  
4 present and seated in the fourth seat.

5 THE COURT: Where is Mr. Chavez?

6 MS. AMATO: Third seat, excuse me.

7 THE COURT: Good morning, Mr. Chavez. Thank  
8 you.

9 MS. TAYLOR: Good morning, Your Honor.  
10 Gretchen Taylor on behalf of Jaime Rosales Villegas.  
11 He's in the back row left in the orange.

12 THE COURT: Good morning.

13 MR. CRAWLEY: Good morning, Your Honor.  
14 Dwight Crawley and John Rockecharlie on behalf of  
15 Mr. Douglas Duran Cerritos.

16 THE COURT: Good morning.

17 MR. BRODNAX: Good morning, Your Honor.  
18 Pleasant Brodnax and Daniel Lopez on behalf of Mr. Ayala  
19 Marquez.

20 THE COURT: Good morning.

21 Good morning, Mr. Ayala.

22 MR. SALVATO: Good morning, Your Honor.  
23 Frank Salvato and Keva McDonald for Christian Lemus Cerna  
24 who is right here.

25 THE COURT: Good morning.

1 MR. JENKINS: Good morning, Your Honor. May  
2 it please the Court. Robert Jenkins on behalf of  
3 Mr. Lopez Torres.

4 THE COURT: Good morning, Mr. Lopez Torres.  
5 Good morning, Mr. Jenkins.

6 MR. BAUGH: Good morning, Your Honor. David  
7 Baugh. My co-counsel is Michael Chick on behalf of the  
8 defendant, Guevara.

9 THE COURT: Good morning, Mr. Guevara.  
10 Good morning, counsel.  
11 Good morning, Mr. Baugh.  
12 Is that everyone?

13 MR. BAUGH: Good morning, Your Honor.

14 MR. ZIMMERMAN: Good morning, Your Honor.  
15 Jeffrey Zimmerman on behalf of Alvin Gaitan Benitez who  
16 is seated next to me in the red.

17 THE COURT: Good morning, Mr. Benitez.  
18 Good morning, Mr. Zimmerman.

19 MS. MARTELL: Good morning, Your Honor  
20 Katherine Martell on behalf of Omar Dejesus Castillo to  
21 my left and Meredith Ralls is for the defendant as well.

22 THE COURT: Good morning.

23 Have we covered everyone now? All right,  
24 good morning, counsel, and good morning each individual  
25 defendant and the government counsel.

1 I have a list of motions that I think still  
2 remain pending that has been provided to you or will be  
3 provided to you.

4 Does everyone have a copy of it? All right.  
5 Then maybe you all can tell me how you propose to  
6 proceed.

7 I'm prepared to take up -- the motion seem to  
8 fall in groups of -- have to do with *Brady* material,  
9 *Jencks*, and *Giglio*, and I'm happy to hear from any lawyer  
10 who has filed such a motion that's on the list. And if  
11 you come to the podium, I'll take them up now.

12 For purposes of the record, if you would  
13 identify yourself and your client.

14 And I know that you all have filed motions to  
15 adopt various motions, and you should presume that  
16 whatever you filed is going to be included in the order  
17 and that you are part of the motion.

18 MR. AQUINO: Good morning, Your Honor. Jerry  
19 Aquino on behalf of Mr. Chavez.

20 THE COURT: Which motion, Mr. Aquino?

21 MR. AQUINO: I think it deals with the first  
22 one, Judge, which is the discovery and *Brady* motion. It  
23 should be number one on the list, I believe.

24 THE COURT: All right.

25 MR. AQUINO: Just very briefly on that,

1 you've ruled on most of the issues in your June -- sorry,  
2 September 11th order. It's just a couple issues that I  
3 thought would be helpful to take up with the Court.

4 The first deals with the issue about  
5 transcripts. And what I mean by that is my guess is to  
6 prove the racketeering acts in this case it's highly  
7 likely that the government is going to offer a number of  
8 transcripts into evidence. And my suggestion to the  
9 Court is that they be produced and identified 30 days in  
10 advance of trial.

11 And the reason I make that suggestion is we  
12 may not agree that the trans -- that there -- that their  
13 translation is accurate. And for that reason, we may  
14 want to get our own expert involved in that. And my  
15 concern is, is that if it comes too late in the game it's  
16 going to cause us some difficulty immobilizing,  
17 especially depending upon the volume of transcripts that  
18 they use.

19 So my suggestion is that we use a date of 30  
20 days prior to trial that the government use, identifies  
21 and gives us copies of those transcripts that they intent  
22 to offer into evidence.

23 THE COURT: What transcripts are you  
24 referring to, for the calls?

25 MR. AQUINO: Yes, correct. In addition to



1 that, outstanding is also that was not addressed in the  
2 order is the question about expert testimony. Again, my  
3 suggestion is we treat it as a civil case. And by that,  
4 I mean, 60 days prior to trial for the government that  
5 they identify who their experts are and what they're  
6 going to say and it gives us time to immobilize and  
7 produce countervailing experts. And I would suggest that  
8 we have until 30 days prior to trial to identify those  
9 experts we may want to use in our case.

10 THE COURT: What part of the rules are you  
11 referring to that requires me to order them to --

12 MR. AQUINO: No part of the rules require  
13 that, Judge. I'm just suggesting that because I think  
14 it's an orderly way to handle the case. The problem is  
15 that if we get too close to trial, it creates a problem  
16 for us to prepare for trial as well as them to have to  
17 run out and get opposing experts depending upon what the  
18 government experts might say. So, I just think it  
19 provides a more orderly way of handling the expert issue.

20 If we get to 30 days prior to trial, it may  
21 not give us sufficient time to be able to immobilize and  
22 get a countervailing expert, again depending upon what  
23 expert they may choose.

24 THE COURT: Well, I need more specificity.  
25 If there's some specific expert that you're concerned

1 about, they already said the government is going to call  
2 some gang expert, something like that, either through  
3 someone who has been qualified as a former gang member or  
4 someone who has studied gangs is going to testify. We  
5 already know that.

6 Is there some forensic experts that you're  
7 thinking in your mind that you think ought to be  
8 identified?

9 MR. AQUINO: Again, I don't know. And the  
10 reason I say I don't know is because I don't know if the  
11 government intends to expand beyond the gang expert that  
12 we're talking about now. If they're going to add two or  
13 three more, it may create a problem for us in being able  
14 to obtaining countervailing experts in that 30-day span  
15 prior to trial. So it's just difficult to say.

16 THE COURT: Well, I appreciate your request.  
17 I guess I'm concerned about the absence of any specific  
18 area that you're concerned about. Because you have an  
19 idea what the parameter of the case is. It's a  
20 racketeering case involving some murders -- two murders  
21 and attempted murder.

22 MR. AQUINO: Understood.

23 THE COURT: So if you're talking about  
24 forensic pathologist, if you're talking about DNA, things  
25 like that, tell me.

1                   If you don't have any specific ones, it's  
2                   hard for me to order them to do something to disclose  
3                   their theory of the case and what their plans are to you  
4                   well in advance of trial. Do you have anything?

5                   MR. AQUINO: I don't, and maybe I could  
6                   suggest that you -- when the government gets up here that  
7                   you ask if there's anything beyond a gang expert that we  
8                   should have to worry about, and then we might be in a  
9                   better position to address that.

10                  THE COURT: Okay. Thank you.

11                  MR. AQUINO: And then the last issue is I  
12                  know at some point today, the government wants to further  
13                  address the Rule 15 deposition issues. I think just as  
14                  to parameters for them. They're already set for  
15                  October 20th.

16                  THE COURT: They're set for October 20th?

17                  MR. AQUINO: Yes, sir.

18                  THE COURT: All right, thank you. And  
19                  they're video depositions; is that right?

20                  MR. AQUINO: Yes, I think that's one of the  
21                  issues the government wants to discuss.

22                  THE COURT: All right.

23                  MS. AMATO: Good morning, again, Your Honor.  
24                  Elita Amato also on behalf of Mr. Chavez.

25                  There were two motions Your Honor has

1 identified on the list that Your Honor wanted to hear on.  
2 One is listed as number five which is defendant's motion  
3 for an order directing the government to provide  
4 impeachment evidence as to all hearsay declarants, and  
5 that was a motion document number 333.

6 Your Honor, in that motion I'm specifically  
7 requesting the government to provide us with impeachment  
8 material that would relate to any out-of-court declarant  
9 whose testimony or statements, excuse me, they intend to  
10 introduce through an in-court witness.

11 And, the rule --

12 THE COURT: What do you mean by that?

13 MS. AMATO: Well, Rule 806 provides a  
14 mechanism for us to impeach an out-of-court declarant who  
15 is -- whose statement is introduced through another  
16 witness.

17 So if the government puts on witness X and  
18 witness X discusses a statement that witness Y told him,  
19 Rule 806 permits us to impeach that witness Y. And,  
20 therefore, I'm asking the government to provide us  
21 impeachment material so that we can be in a position to  
22 impeach that out of court --

23 THE COURT: You have to give me some tangible  
24 hypothetical. I don't understand.

25 MS. AMATO: Well, again, if witness X

1     testifies, let's say, that he heard witness Y state  
2     something in regards to Mr. Chavez, for example, and  
3     witness Y does not take the stand, and that's why they  
4     have witness X give a statement that witness Y said, and  
5     it is a hearsay statement, but let's say it's permitted  
6     under Rule 801. So we're hearing a witness that  
7     witness -- that declarant Y said through witness X. Rule  
8     806 permits us to impeach the out-of-court declarant  
9     which is Y, and --

10           THE COURT: And so what do you want? Are you  
11     asking for prior record? Are you asking --

12           MS. AMATO: Yes.

13           THE COURT: Let me finish. Let me finish.  
14     Are you asking for prior record? Are you asking for  
15     prior inconsistent statements that the government's way  
16     aware of?

17           MS. AMATO: Correct.

18           THE COURT: That would be exculpatory,  
19     wouldn't it?

20           MS. AMATO: Right, Your Honor. We'd be  
21     asking for any kind of juvenile adjudications, any prior  
22     convictions via out of court --

23           THE COURT: You mean all of these would fall  
24     under 609, right?

25           MS. AMATO: Right.

1 THE COURT: Don't they have an obligation to  
2 do that anyway, Ms. Amato?

3 MS. AMATO: Right, they do. Exactly, they  
4 do. But we just want to make sure that they're on notice  
5 that it's not just for the witnesses that they intend to  
6 call but for any out-of-court declarants hearsay  
7 statement that they elicit.

8 So we'd also like any promises that are  
9 provided to an out-of-court declarant, anything like  
10 that. So, yes, you're right, we believe the rules  
11 require it. We just want to make sure they're aware of  
12 that and they're on notice of that.

13 THE COURT: Well, the hypothetical you posit  
14 to me is difficult to understand. But, as I understand  
15 the basic rudiments of it, if the government offers a  
16 witness who testifies that witness X said something and  
17 then the government knows that witness X has given  
18 inconsistent statement or has been given some deal or  
19 money, they're required to disclose it. Is that what  
20 you're saying?

21 MS. AMATO: Correct.

22 THE COURT: All right. Well, I think that's  
23 encompassed in the discovery *Brady/Giglio*, but I  
24 appreciate your motion.

25 MS. AMATO: Thank you. The other motion that

1 I have filed that's also listed on the Court's list is  
2 the last one. It's number 11 which I believe also should  
3 be pretty self-explanatory. It's our request for the  
4 preservation of electronic mail. And that is  
5 particularly as to the government's *Jencks* requirements  
6 that we would request that they obviously preserve and  
7 then turn over any type of communication between any law  
8 enforcement and the government, any witnesses to law  
9 enforcement, anything that would be considered *Jencks* but  
10 that is being communicated as opposed to verbally, that  
11 is being communicated through text messages, through  
12 e-mails, any kind of electronic communication.

13 THE COURT: You're saying *Jencks* statements  
14 that are in e-mail?

15 MS. AMATO: Correct. Because in this day and  
16 age, clearly witnesses are communicating with law  
17 enforcement or with government counsel through e-mails,  
18 through text messages sometimes.

19 I mean, I've had myself, I've had potential  
20 defense witnesses who have communicated to me and  
21 provided me information about their testimony in an  
22 e-mail or even in a text. And so I want the government  
23 just to be put on notice that we are requesting and  
24 expecting those types of communications as well since  
25 they would also be *Jencks*.

1 THE COURT: All right.

2 MS. AMATO: Thank you, Your Honor.

3 THE COURT: We'll take one more and give the  
4 government a chance to respond.

5 Come up, Mr. Lopez.

6 MR. LOPEZ: Thank you. Your Honor, good  
7 morning. Daniel Lopez for Mr. Ayala who is present in  
8 court.

9 Your Honor, this would be motion number 325,  
10 number two on the Court's list that was --

11 THE COURT: All right.

12 MR. LOPEZ: -- provided this morning. And,  
13 Your Honor, as you can see in the motion, we're asking  
14 for as early disclosures of the *Jencks* material and the  
15 *Brady* and *Giglio* materials. And I do note that Your  
16 Honor has ruled on this issue for informant testimony,  
17 and this would be non-informant testimony is the way that  
18 I'm reading the Court's ruling -- the order that was  
19 released -- signed on 11th of September.

20 Your Honor, what we're asking the Court to do  
21 is to -- we would like this *Jencks* material now, Your  
22 Honor. I understand the Court's hesitancy in some  
23 aspect --

24 THE COURT: If you would address that, that  
25 would help me because the government has said that there



1 are security reasons not to release prematurely months in  
2 advance the identities of individuals who may be  
3 witnesses because of the risk that there might be some  
4 retaliation or intimidation of witnesses which we know  
5 has occurred in the past in cases where there have been  
6 allegations involving MS-13. These are allegations.  
7 Nonetheless, there have been instances in this court  
8 we're very aware that has occurred.

9 So what's your response? What should I do  
10 about all that?

11 MR. LOPEZ: Yes, Your Honor. Your Honor,  
12 this Court has issued protective orders already in one  
13 matter for a witness who may be removed. There's also  
14 matters that I wasn't personally involved in litigation,  
15 but I just reading the electronic filing where it appears  
16 that there were protective orders also issued.

17 And I would suggest to the Court that myself  
18 and my colleagues would, of course, follow the Court's  
19 order and not reveal this information to anybody,  
20 including our clients, only to the extent permitted in  
21 the order, which would guarantee the safety of these  
22 witnesses.

23 Your Honor, the entire -- my understanding is  
24 most of these folks are incarcerated at this point,  
25 either for this case or in hands of ICE or other law

1 enforcement officials.

2 THE COURT: That has not stopped individuals  
3 from being accused of engaging in retaliatory activities  
4 even from the jail. I understand what you're saying, but  
5 there's a balancing here. And we're now seven months  
6 away from trial.

7 Why would you need it seven months ahead of  
8 trial, Mr. Lopez?

9 MR. LOPEZ: Well, Your Honor, obviously in a  
10 case of this magnitude with very severe consequences for  
11 Mr. Ayala, the more time we have to investigate, the  
12 better is it for Mr. Ayala, the better we can effectively  
13 represent Mr. Ayala.

14 However, in striking the balance, Your Honor,  
15 I would suggest to the Court then perhaps 90 days before  
16 trial would be an adequate point to give the defense the  
17 time with this information to investigate what's  
18 contained in it, to verify any of these statements, look  
19 at impeachment, et cetera.

20 THE COURT: So your proposal is 90 days  
21 before trial --

22 MR. LOPEZ: Yes, sir.

23 THE COURT: -- with a protective order  
24 concerning the identities of the witnesses. Is that  
25 right?

1 MR. LOPEZ: Yes, Your Honor, and their  
2 statements.

3 THE COURT: All right.

4 MR. LOPEZ: And, Your Honor, that would also  
5 apply to the -- to the *Brady* material, although I  
6 understand and the government does acknowledge it's an  
7 ongoing duty. But I would suggest that they have their  
8 similar concerns. And to that extent that they have  
9 security concerns, I would suggest the Court that 90-day  
10 would be appropriate.

11 And there are some individuals perhaps their  
12 safety concerns aren't quite as heightened and that would  
13 be any sort of impeachment evidence of law enforcement  
14 officer who are involved in the case and whose names are  
15 already out there on some of the documents that are  
16 available to counsel.

17 And of course, counsel being mindful of  
18 what's happened in the past, Your Honor, we would not --  
19 at least I can let Your Honor know that I would not  
20 spread those names around in any place where those people  
21 would be subject to --

22 THE COURT: What type of impeachment evidence  
23 do you think that the government may have in law  
24 enforcement that should be disclosed 90 days in advance  
25 of trial, Mr. Lopez?

1 MR. LOPEZ: Your Honor, there are instances  
2 where law enforcement might have been reprimanded by  
3 officials for unethical conduct during the course of  
4 their duties or actual -- and, Your Honor, I'm not trying  
5 to cast --

6 THE COURT: This is your -- you're doing your  
7 job. You're saying that if some officer that has been  
8 reprimanded for lying in court?

9 MR. LOPEZ: Yes, sir, any sort of perjury  
10 testimony, manufacturing evidence, any questionable  
11 procedures on handling evidence, that sort of thing, Your  
12 Honor.

13 THE COURT: All right. That would be  
14 exculpatory, wouldn't it?

15 MR. LOPEZ: It would be, Your Honor.

16 THE COURT: All right.

17 MR. LOPEZ: Your Honor, thank you. That's  
18 all we have.

19 THE COURT: I'm going to go back to the  
20 motions. I'm going to give the government counsel a  
21 chance to respond what's been presented so far so we can  
22 stay on the same page.

23 MR. TOBLER: Thank you, Your Honor. I'll  
24 first take up that last matter that was discussed by  
25 defense counsel.

1           As Your Honor alluded to at the outset, this  
2 question of *Jencks* and *Brady* and *Giglio* arises in several  
3 of the pending motions. So I'll try to respond to all of  
4 those at once for purposes of efficiency. They all seek  
5 the same basic relief which is early disclosure of  
6 *Jencks*, *Brady* and *Giglio* materials.

7           THE COURT: They do, but it would be helpful  
8 to me if you focus on the things that the defense counsel  
9 has brought up now, so that I'm not just making a general  
10 ruling and not taking into account, for example -- do you  
11 agree Mr. Lopez says that if some law enforcement witness  
12 has received a reprimand for lying in court,  
13 manufacturing evidence or things like that, that may not  
14 be the subject of a criminal conviction -- I was just at  
15 a meeting this weekend where a states attorney told the  
16 audience that she has something called a do-not-call  
17 list. And these were officers who the prosecutor  
18 determined that there would be questions about their  
19 credibility.

20           And so, there were certain police officers  
21 that they didn't call -- her office had a policy not to  
22 call them. I don't know if you have such a thing. But  
23 I'm curious as to whether, if there is such a thing or  
24 issues of fabricating evidence or manufacturing evidence,  
25 you would agree that would be exculpatory, don't you?

1 MR. TOBLER: We certainly would agree with  
2 that, Your Honor.

3 THE COURT: Would there be any reason to  
4 withhold that 90 days before the trial --

5 MR. TOBLER: Your Honor --

6 THE COURT: -- for police officers or --

7 MR. TOBLER: Yes, Your Honor, we do believe  
8 that that -- it's more critical from our standpoint of  
9 our safety concerns to withhold information involving  
10 witnesses that are not law enforcement officers.

11 THE COURT: My question had to do with police  
12 officers --

13 MR. TOBLER: Yes, Your Honor.

14 THE COURT: -- or agents who have issues with  
15 lying in court, manufacturing evidence, or prosecutors  
16 who do not call them because of their testimony in cases.

17 MR. TOBLER: My apologies, Your Honor. To  
18 answer your question, I believe that 90 days before trial  
19 for any impeachment materials for law enforcement is a  
20 reasonable deadline and that we would be able to meet  
21 that deadline.

22 THE COURT: All right.

23 MR. TOBLER: If I can turn to the other  
24 evidence, Your Honor, the approach to discovery  
25 obligations that the government has taken in this case.

1 THE COURT: I -- I want to focus on what has  
2 been argued so that that doesn't get lost.

3 MR. TOBLER: Sure.

4 THE COURT: And I've read your opposition,  
5 you're 48 page brief. And it's very helpful and very  
6 comprehensive. But I need to focus on what's being  
7 presented specific requests under *Brady* have a different  
8 set of review as you know. So I'm trying to focus on  
9 those first.

10 MR. TOBLER: Absolutely.

11 THE COURT: So, there was request by  
12 Ms. Amato about e-mail and text messages, statements from  
13 witnesses. What about that?

14 MR. TOBLER: Yes, in response to that motion,  
15 as set forth in the government's papers, the government  
16 is aware of its requirements under *Jencks*. It has also  
17 taken pains to make sure that all law enforcement  
18 investigative agencies that are working on this case are  
19 also aware of their obligations under *Jencks*.

20 And as a point of fact as the Court may be  
21 aware, the Department of Justice has a policy of  
22 preserving all e-mail for up to five years. So that  
23 e-mail is not going anywhere. And we've met all  
24 obligations under *Jencks* so far and will continue to meet  
25 those obligations moving forward.

1 THE COURT: Have you received e-mail from  
2 witnesses or text messages from witnesses that have been  
3 sent to law enforcement? Are those preserved?

4 MR. TOBLER: With the Court's indulgence one  
5 second.

6 THE COURT: Uh-huh. The example I'm thinking  
7 of is suppose some witness who has been in touch with  
8 some agent, text message the witness --

9 MR. TOBLER: Yes, Your Honor.

10 THE COURT: -- the officer and says, look,  
11 you know, I really don't want to come to court. And by  
12 the way, I think what I told you before is not the truth  
13 but in a text message. That would be a statement by the  
14 witness, wouldn't it?

15 MR. TOBLER: I agree, Your Honor, and I  
16 understand the question. The government isn't currently  
17 in possession of those sorts -- of that sort of  
18 information, that sort of *Jencks* material. But as I  
19 stated before, we certainly made law enforcement aware of  
20 its ongoing obligations to preserve those *Jencks*  
21 materials and we will do that moving forward.

22 If we come into possession of any such  
23 materials like that --

24 THE COURT: Will you affirmatively tell  
25 police officers who interview witnesses that if they



1 receive text messages or e-mails from witnesses to  
2 preserve them. Will you do that?

3 MR. TOBLER: Yes, sir.

4 THE COURT: All right. So you wouldn't have  
5 any problem my ordering you to do that, would you?

6 MR. TOBLER: Excuse me.

7 THE COURT: You wouldn't have any problem my  
8 ordering you to do that, would you?

9 MR. TOBLER: No, Your Honor.

10 Moving to the motion for an index or  
11 transcripts of calls, multiple defendants in this case  
12 have requested that the government produce transcripts of  
13 the calls at a date certain prior to trial.

14 THE COURT: I know you have an agenda and I'm  
15 trying to follow mine. And the reason I've asked the  
16 lawyers to come up with their specific arguments is I  
17 wanted to address them.

18 So the next thing I have on my list has to do  
19 with expert testimony from the government. Mr. Aquino  
20 wants 60 days in advance for ID. He wants to use some  
21 civil rules.

22 I'm not really familiar with what experts  
23 beyond the gang expert you plan to call. I guess you  
24 call the pathologist and people with blood and things  
25 like that given the scene of the two alleged murders and

1 alleged attempted murder.

2 Are there other experts that I'm missing that  
3 you might be calling?

4 MR. TOBLER: No, Your Honor. We --

5 THE COURT: I'm not trying to make you reveal  
6 your case now. I'm just curious.

7 MR. TOBLER: I understand that and I  
8 appreciate that, Your Honor. And I think it's reasonable  
9 to assume at this point that there will be an expert, one  
10 expert we anticipate at this time on the gang in general,  
11 also, a medical examiner and a forensic expert, along  
12 those lines.

13 But, as Your Honor mentioned we're not  
14 prepared today, of course, to disclose all of the experts  
15 that we will ultimately be calling at trial.

16 But in any event, we do believe that the  
17 30 days for expert disclosure as set forth in the  
18 proposed discovery order, Exhibit 1 to the memorandum,  
19 that we've attached, issued a memorandum that we  
20 submitted in response to the defendant's motion is a  
21 sufficient period of time for expert disclosures for the  
22 defense as well as for the prosecution.

23 THE COURT: But you're talking about 30 days  
24 before trial?

25 MR. TOBLER: That's correct, Your Honor.

1 THE COURT: Well, I guess the question I have  
2 is given the complexity of the case and the fact that it  
3 is a complex case and the number of defendants here, when  
4 do you expect them to digest your notice of expert and  
5 have time to identify an expert, get ready for trial,  
6 jury selection? Isn't this a case where 30 days might  
7 need to be bumped back to 45 or 60?

8 We're talking about experts. We're not  
9 talking about something that's going to surprise the  
10 defendants that someone is dead. It's going to be a fact  
11 that a pathologist would say.

12 And if there's -- a gang expert is going to  
13 say what the gang expert is going to say. We already  
14 know what they say. MS-13 is a gang. We got that part.

15 MR. TOBLER: Thank you, Your Honor. We  
16 understand and appreciate that it's a complex case,  
17 that's why the date, the 30 days in advance of trial was  
18 proposed and our proposed discovery order as opposed to  
19 what's typical in this court which is a period of ten  
20 days.

21 We do believe that the government will need  
22 30 days to properly examine the materials as you say, as  
23 they come over from the defendants. And that's also a  
24 period of time that's appropriate for the defendants when  
25 they're reviewing expert disclosures from the government.

1           So, in other words, we have already attempted  
2           to account for the fact that this is an especially  
3           complex trial and proposing that 30-day period as opposed  
4           to ten days which is typical in this court, Your Honor.

5           THE COURT: All right. And, as it relates to  
6           the transcript of the calls, I -- as I understand,  
7           Mr. Aquino's concern, he thinks there might be some  
8           dispute about the interpretation of the calls. And I  
9           guess my question to you would be you've already  
10          disclosed the actual tapes in Spanish; is that right?

11          MR. TOBLER: That's correct, Your Honor.

12          THE COURT: And these defendants have  
13          resources to hire their own interpreter to listen to the  
14          calls.

15          MR. TOBLER: We believe so, Your Honor.

16          THE COURT: All right. So --

17          MR. TOBLER: That being said, Your Honor, I  
18          would add that although the government has taken the  
19          position as Your Honor is aware in its papers that we are  
20          not required to disclose transcripts well in advance of  
21          trial.

22                 We've reviewed that request. I believe it  
23          came in one instance from the defendant, Paiz Guevara and  
24          we do believe that it's reasonable for the government to  
25          produce transcripts of recordings that it intends to use

1 at trial. And we believe a period in advance of trial,  
2 perhaps 30 to 60 days as the defendants have requested  
3 would be appropriate.

4 THE COURT: All right. Well, pick 30 days or  
5 60. Which one do you want?

6 MR. TOBLER: Excuse me.

7 THE COURT: Thirty or 60?

8 MR. TOBLER: Sixty.

9 THE COURT: Sixty would be fine. These are  
10 transcripts of the audio recordings that the government  
11 has and plans to use in evidence; is that correct?

12 MR. TOBLER: That's correct, Your Honor, that  
13 it plans to use in evidence.

14 THE COURT: Okay. All right. Let me take up  
15 the next set. You see what I'm doing?

16 MR. TOBLER: I do now, Your Honor.

17 MR. CHICK: Your Honor, if I may briefly on  
18 that order --

19 THE COURT: I haven't entered any order yet,  
20 but come on up. I'm trying to give you all a chance who  
21 wants to be heard, to be heard on these matters.

22 And then the other motions that you have that  
23 you want to be heard on, I'm taking them up according to  
24 my schedule here, this list that I gave you all.

25 Come to the podium and tell me your name.

1 Because they're so many people here, each person has to  
2 identify themselves.

3 MR. Chick: Yes, sir. Mike Chick, C-H-I-C-K  
4 on behalf of Mr. Paiz Guevara.

5 I just heard the Court and the government  
6 discussing the transcripts. I just wanted to make  
7 sure -- I think I understand but I just want to make sure  
8 that we're all on the same page, that those transcripts  
9 have been -- are going to be in English as opposed to the  
10 Spanish language transcripts. I know it's a silly  
11 question, but I just want to make sure that -- that we're  
12 all on the same page about that.

13 THE COURT: You're right, Mr. Chick, silly  
14 question.

15 MR. Chick: Thank you, Your Honor. I know, I  
16 know.

17 THE COURT: It is, I mean.  
18 Come on. Next.

19 MS. AMATO: Your Honor, excuse me. I just  
20 wanted to follow up with that. Elita Amato, Mr. Chavez.

21 I know that different prosecutor's offices  
22 handle these transcripts differently. And I'd like to  
23 know and I'd be asking, actually for the government to  
24 provide a transcript where there's a Spanish on one side  
25 of the page and the English on the other so that may --

1 that's naturally the appropriate way that the transcript  
2 should be done since the actual language is being spoken  
3 is in Spanish. And so that way, one can compare it much  
4 better with it in Spanish and in English and review it.

5 THE COURT: I appreciate it, Ms. Amato. What  
6 you're going to get is English transcripts. And if you  
7 want to have them side by side, you just pull up your  
8 Spanish transcript, put it side by side. I'm not going  
9 to make them draw some format like that, typically a  
10 transcript that is produced just in English.

11 MS. TAYLOR: Your Honor, if I may ask a  
12 question. Gretchen Taylor --

13 THE COURT: Yes, Ms. Taylor.

14 MS. TAYLOR: -- on behalf of Rosales  
15 Villegas.

16 Are the parties in the transcript going to be  
17 identified? So, you know, the government claims that my  
18 client, for instance, is one of the speakers, and maybe  
19 another defendant --

20 THE COURT: I don't think that they're  
21 required to do that. If they decide to do that, that's  
22 great. Unless the speaker identifies himself in the  
23 call, the government's not required to tell you who they  
24 think the person speaker is. So I'm not going to make  
25 them do that.

1           If the speaker says, hi, I'm Joe and I'm  
2     talking on the phone, that's one thing. They're just  
3     going to give you a transcript, period. You understand?

4           MS. TAYLOR: I understand, Your Honor. I'm  
5     just worried about there are hearsay concerns if it's not  
6     a party to the case, and if they're identified by, you  
7     know, informant X or whatever is fine. I just want to  
8     make sure that we know the parties to the case if they're  
9     identified so that, you know, if my client says no,  
10    that's not me, I know which ones they're claiming are  
11    him, et cetera.

12          THE COURT: That's a matter of proof. You'll  
13    be able to cross-examine on that.

14          MS. TAYLOR: Yes, Your Honor.

15          MR. SALVATO: Good morning, Your Honor.  
16    Frank Salvato for Christian Lemus Cerna. And Keva  
17    McDonald is my co-counsel.

18          Your Honor, to circle back, I just want to  
19    make clear for the record we do join Mr. Lopez's request  
20    for that 90-day time period with regard to *Jencks* with a  
21    protective order.

22          I don't know if the Court --

23          THE COURT: I have footnotes in my notes that  
24    all individuals would joined each other's motions. So if  
25    this -- what this is, is that everyone has already done



1 that.

2 MR. SALVATO: I don't know if the Court  
3 finalized its ruling with respect to *Jencks* and *Giglio*  
4 and the timeframe.

5 THE COURT: No, I haven't issued any ruling.  
6 I'm going to issue a written order once I finish the  
7 hearing.

8 MR. SALVATO: So, we would join that, Your  
9 Honor. We would certainly abide by any terms of a  
10 protective order and certainly not even share that with  
11 our client.

12 I think *Jencks* and *Giglio*, 90 days in  
13 advance, considering the points made by Mr. Lopez, the  
14 complexity of the case, the severity of the consequences  
15 and I think all counsel would abide by any protective  
16 order that the Court would issue. So we would ask for --

17 THE COURT: Have you had a case where you had  
18 three months disclosure of *Jencks* material, Mr. Salvato,  
19 ever?

20 MR. SALVATO: I don't believe so, Your Honor,  
21 however --

22 THE COURT: I don't either.

23 MR. SALVATO: I've never had a case that  
24 looked like this scenario either, in 26 years of being in  
25 the --

1 THE COURT: Have you had a death penalty  
2 case, Mr. Salvato?

3 MR. SALVATO: I did, Your Honor.

4 THE COURT: And did you get the *Jencks*  
5 material 90 days in advance of a death penalty case?

6 MR. SALVATO: It was certainly well in  
7 advance of trial.

8 THE COURT: It wasn't 90 days. It might have  
9 been 30 days, but it wouldn't have been 90 days.

10 MR. SALVATO: It may have been, but  
11 considering the amount of -- the sheer volume of this  
12 case in terms of the defendants, 7,000 phone calls that  
13 we're still dealing with, and the sheer enormity of the  
14 case, and also the fact that the Court can impose a  
15 protective order with regard to the *Jencks* material -- I  
16 don't believe -- I don't recall whether there was a  
17 protective order in that previous case or not.

18 But given all of those factors, I think  
19 certainly something in advance of 30 days, if not  
20 approaching 90 days would be appropriate, considering the  
21 specific facts of this case, Your Honor.

22 THE COURT: Thank you.

23 MR. SALVATO: So I would join with regard to  
24 that, Your Honor.

25 THE COURT: What I'm trying to tell you,

1 Mr. Salvato, you've already joined everything that you  
2 were given in writing. So I don't want to have every  
3 lawyer to come up and say I join in what Mr. Lopez said  
4 or Mr. Aquino said. It's not helpful to me.

5 MR. SALVATO: I understand, Your Honor. And  
6 the 60 days -- the only other issue with regard to our  
7 client that I believe is pending is some type of index  
8 with regard to these phone calls that we have received.  
9 That's item number seven or item number six which is  
10 document number 348. And if I could just be heard for  
11 about 30 seconds.

12 THE COURT: Number six, index. Tell me what  
13 you're asking for.

14 MR. SALVATO: This is what we're asking for,  
15 Your Honor. What we're asking for specifically is an  
16 index. And it can be a rolling index. It doesn't need  
17 to be a final index, but an index that the government has  
18 by defendant identifying which individuals the government  
19 contends are on call that they intend to introduce.

20 So, we're asking --

21 THE COURT: You want the government to commit  
22 to the identity of the callers in the recordings?

23 MR. SALVATO: If they know them. So, if they  
24 have an index now of a call between my client and say,  
25 Mr. Lopez's client which they know they're going to

1 introduce at trial and they already intend to introduce  
2 that call, they know it's between these two individuals,  
3 that would be extremely helpful in our process of having  
4 our -- the other calls and, in fact, that call  
5 independently translated.

6 So, we're asking for an index of the calls  
7 that they intend to introduce at trial identifying, if  
8 they know, the callers that are within that call by  
9 defendant.

10 And let me tell you why I have that request,  
11 Your Honor. We've spoken to the translators on the  
12 defense side that are undertaking this task. And as I  
13 understand it, Your Honor, the defense has completed only  
14 approximately 25 percent of the 7,000 or so phone calls.

15 There is apparently an effort to bring in  
16 about 3 or 4 new or additional translators in order to  
17 complete this task. I can tell the Court that a  
18 one-minute phone call takes about one hour for the  
19 translators to finish.

20 And what the translators have informed us is  
21 that it would be extremely helpful for their job to get  
22 some specificity as to calls that are clearly irrelevant  
23 and other calls which seem to have more meat on the  
24 bones.

25 THE COURT: I may be misreading the

1 government's response. I had the impression that the  
2 government gave you a list of calls it deemed to be most  
3 pertinent without committing to those calls. Did you  
4 receive that?

5 MR. SALVATO: Correct, we have received that.

6 THE COURT: So, are your translators focusing  
7 on those calls first?

8 MR. SALVATO: We're focusing on those calls.

9 THE COURT: First, first?

10 MR. SALVATO: But a lot of those calls are --  
11 the individuals on the call are not identified. So it  
12 might be unidentified male talking to unidentified male,  
13 which makes it particularly difficult if we get a call  
14 between two unidentified males to then take every call  
15 then back to our clients to say, is this you on the call?  
16 Who are they talking about, et cetera.

17 If we have an index, Your Honor, of -- and  
18 all we're asking for if the government already has an  
19 index by defendant and they've identified the people on  
20 those particular calls, that would be extremely helpful  
21 in --

22 THE COURT: How would the government be able  
23 to know in advance who was speaking on each of these  
24 calls, Mr. Salvato?

25 MR. SALVATO: Well, I think some of the calls

1 may be between informants and clients. Some of these  
2 calls may be from specific phone numbers that they have  
3 identified to a particular defendant.

4 So, there are circumstances where I am sure  
5 the -- the government at some point, as we're sitting  
6 here at trial, will have to connect the phone calls to a  
7 particular defendant. And I'm sure that process has  
8 started, if not been completed.

9 So, all -- all I'm asking for in my index is  
10 a rolling index. It doesn't have to be a final index.  
11 It can be a draft index of calls that the government  
12 intends to introduce as per each defendant, and if they  
13 have it, if they have it, who is on that particular call.  
14 So, that's what we're asking for in terms of our index.

15 Then we can take that back to our  
16 translators, back to our clients more specifically  
17 without taking 7,000 phone calls between unidentified  
18 male and unidentified male to my client. That's simply  
19 an unworkable proposition, even given the government's  
20 position that they'll get the transcripts to us 60 days  
21 in advance.

22 Other than that, Your Honor, those are the  
23 two points I wanted to make, the 90 days in advance in  
24 terms of *Jencks* and *Giglio* and also an index with respect  
25 to the phone calls.

1 THE COURT: Well, I'm not going to let make  
2 them tell you who they think is the caller. I don't  
3 think they're required to do that. And, I think that if  
4 they're wrong about who they think it is, that that would  
5 then be a matter for you to impeach.

6 And I think -- I have an order here back in  
7 May where the defense has had resources and has had  
8 resources for four months and it's still seven months  
9 before trial.

10 So if you're saying, you can't get it done in  
11 11 months, then I guess it won't be done. But I've given  
12 you all the resources you need to do it. But I'm not  
13 going to make them outline for you who they think the  
14 speakers are because they're not required to do that.  
15 And you have the resources now to order your own  
16 transcripts. And you have your own interpreters, so you  
17 can pay for them.

18 Those are trial matters. If you want to draw  
19 up an index and have the ones they give you, the  
20 pertinent calls that they think they're going to use,  
21 they're not committing to that. They've given you some  
22 outline. That's all I'm going to give you.

23 MR. SALVATO: I appreciate it, Your Honor.

24 MR. CRAWLEY: Good morning, Your Honor.

25 THE COURT: Good morning.

1 MR. CRAWLEY: Dwight Crawley on behalf of  
2 Mr. Cerritos.

3 THE COURT: Which motion are you speaking to,  
4 Mr. Crawley, that's on my list?

5 MR. CRAWLEY: I wanted back to Ms. Taylor's  
6 request that the Court order the government to identify  
7 the individuals in the transcripts that they are  
8 preparing to use at trial.

9 And, I think --

10 THE COURT: Were you just here a moment ago  
11 when I just had that argument about identities?

12 MR. CRAWLEY: I did.

13 THE COURT: Okay. So you've heard me address  
14 that twice. Do you have something new to say about it?

15 MR. CRAWLEY: I have a question, Your Honor.

16 THE COURT: All right.

17 MR. CRAWLEY: It would seem to me that if  
18 they're providing us transcripts that they're actually  
19 prepared to use at trial, then it would not be cumbersome  
20 or a burden to the government to identify who those  
21 individuals are. These are the transcripts that they're  
22 telling the Court that they're going to use at trial.  
23 So, at trial, they have to identify who the speaker is.

24 So, why would the Court not require them to  
25 tell us who that speaker is.



1 THE COURT: I just told you. Thank you.

2 All right. The next set of motions anyone  
3 want to be heard on that's on my list?

4 MR. BAUGH: David Baugh, Your Honor, for the  
5 defendant, Paiz Guevara, only because no one else jumped  
6 up. We have the --

7 THE COURT: Which motion are you referring to  
8 on the list, Mr. Baugh?

9 MR. BAUGH: Yes, number three.

10 THE COURT: All right.

11 MR. BAUGH: His motion for immediate tender  
12 of *Giglio* materials. I know you've already ruled on when  
13 they have to give up the *Giglio*. However, it goes to two  
14 things.

15 One, we would ask for the protective order as  
16 well in the 90 days, because most of my training in this  
17 goes back to the *Beckford* case wherein we -- we need not  
18 only to know what convictions they're getting forbearance  
19 from, but we need to find out -- since the Ogden,  
20 O-G-D-E-N memo, which I cited came out of the Department  
21 of Justice, the extent of the government *Giglio* offer has  
22 been turned on its head. We listed it.

23 Not only --

24 THE COURT: Excuse me. Okay, sorry.

25 MR. BAUGH: Yes, sir. We put a list in there

1 and I won't run over it again, but I mean things like S  
2 Visas which normally is not given up, relocation  
3 assistance, also the contra things, member in other  
4 gangs, relationship with the victim, relationship with  
5 the defendant. That is the extent of the *Giglio*.

6 And when that information comes to us, we  
7 need time to investigate it. And in this type of case,  
8 investigation can be very involved and sometimes you run  
9 into obstructions.

10 So, I would state that I would ask for the 90  
11 days with protective order as well and that the order  
12 reflect when tendering *Giglio* that it include those items  
13 listed under the DOJ memo of the sort of benefits the  
14 government can give and whether or not they've done it.

15 And additionally, not only do we need to  
16 know --

17 THE COURT: So, you're saying you want to  
18 specify that they have ascertained the items in the Ogden  
19 memo?

20 MR. BAUGH: Yes, Your Honor, determine if  
21 they did -- if it was done or not.

22 THE COURT: Uh-huh.

23 MR. BAUGH: And additionally that they give  
24 us not only a list of -- well, in the Ogden memo, they do  
25 address this and that is issue of forbearance where if a

1 man could be charged with murder and instead they charged  
2 him with littering or something like that --

3 THE COURT: That's *Brady* material. You agree  
4 with that, right?

5 MR. BAUGH: I would agree that is *Brady*  
6 material and I understood for the first time your concern  
7 about this balancing and security, particularly since  
8 last time I was in front of you in front on one of these  
9 matters many years ago, we didn't have the Virginia State  
10 Bar LEO 1862 that says that has recognized that trial  
11 lawyers need this information not only to present at  
12 trial but to investigate it so it can be presented at  
13 trial.

14 And to give us to -- you've said 90 days,  
15 actually I'd like as much as humanly possible. But if we  
16 can get it 90 days with a protective order, we can get  
17 our investigators or ourselves out and find out, because  
18 many of these cases are confidential informant-driven  
19 cases. And the credibility of the confidential informant  
20 is a vital issue at these trials.

21 So, we have --

22 THE COURT: Some of the witnesses actually  
23 may be people who were present and may have been involved  
24 in these things. You suspect that, Mr. Baugh?

25 MR. BAUGH: Yes, sir.

1 THE COURT: Well then, I -- I want to say out  
2 loud that I've looked at your list on pages 6, 7 and 8 of  
3 your --

4 MR. BAUGH: That's Mr. Ogden's list.

5 THE COURT: Yes. Well, it's your list in  
6 your motion that you filed Document 354, and I have it in  
7 front of me.

8 And, the government has an obligation to  
9 produce all these things. There's no question about  
10 that. And, I think that they have a specific obligation  
11 to disclose it with respect to anyone that is going to  
12 testify at the trial that they plan to offer.

13 I guess the concern I have is the one that I  
14 addressed earlier and that is these things about S Visas,  
15 monetary benefits, you don't get all of that. So, I'm  
16 not sure what more there would be to investigate about  
17 how much money the government gave you.

18 Maybe there is more to do, but I'm concerned  
19 about the issue of witness security. And, so if you have  
20 some ideas about that, I'll hear them.

21 MR. BAUGH: Yes, Your Honor. It may be a  
22 two-step process. And I was listening to your security  
23 concerns. Many of these things can be done with the  
24 identification redacted.

25 If -- if -- if there's some particular

1 issues, if they can say that witness X received X number  
2 of dollars, we can't really investigate that. But we  
3 could do more than not knowing it happened.

4 So, I would say that where necessary, we're  
5 going to have to balance, Your Honor, with security and  
6 you're going to have to -- I understand the security  
7 concerns, and I understand the Court's security concerns  
8 and I know that there's a history of that.

9 However, I come back to the fact that I'm  
10 representing that man over there, and he's my only  
11 concern. And I'm not going to tell him the names, and I  
12 swear to God I won't.

13 THE COURT: I know. As an officer of the  
14 Court and experienced attorney as you are, I'm confident  
15 that you will not.

16 However, I cannot necessarily leave the  
17 witness security to the good faith statements of the  
18 officer of the court.

19 I know each of the defense counsel here have  
20 appeared in this court before and they have  
21 representations for integrity and being vigorous fighters  
22 on behalf of their client. That's why most of you are  
23 here.

24 MR. BAUGH: Thank you.

25 THE COURT: But, the issue is one of

1 protecting witness identity in advance of trial and  
2 trying to balance that with the defendant's right to  
3 information.

4 Basic information about plea agreements,  
5 you're going to get that anyway. And all of you are  
6 very experienced. I've seen you all cross-examine the  
7 snitch and the testifying witness with the plea  
8 agreement. I know exactly what you're going to do. You  
9 know what you're going to do about that.

10 The hickey stuff, when I say hickey, I mean  
11 things like mental health, addictions, things like that,  
12 may require some more information. But, I'm struggling  
13 with how to do that and not compromise witness security.

14 And I'm inviting you all for suggestion and  
15 it sounds like your suggestion is either 90 days or  
16 30 days, judge. And if you have another suggestion, now  
17 is your time to tell me.

18 MR. BAUGH: Your Honor, I will settle for the  
19 90 days. I understand there's a balancing --

20 THE COURT: I didn't say I would give you  
21 90 days. I said that's your position. That's your  
22 position is 90 days.

23 MR. BAUGH: I'm sorry.

24 THE COURT: And the government's position is  
25 30 days, and I'm trying to see if they're -- so far

1 nobody has had a solution. I've been trying to think of  
2 one, too. But I don't have a solution that meets your  
3 need. And I don't think we're going to have that many  
4 witnesses with -- and without even knowing how many might  
5 have been to mental institutions or drug treatment  
6 programs that may have some information that bears on  
7 their truth telling.

8 Other than that, I don't really -- the rest  
9 of the stuff, plea agreement and how much money they  
10 paid, they're going to give you that anyway and you know  
11 what to do with that.

12 MR. BAUGH: Your Honor, some of the things  
13 I've seen for some of these young people, they have  
14 juvenile problems. They have school problems, school  
15 counselor problems. They're all out there, and they're  
16 all indicating impact on credibility.

17 THE COURT: Well, 609 is limited. You know,  
18 what some kid did in junior high school is not  
19 impeachable, right?

20 MR. BAUGH: No, no. It may not be  
21 impeachable by itself, but it could be the source of  
22 investigation -- if we find out that he did something  
23 that by itself was not impeachable, we all have the  
24 obligation to look under all the rocks and find out the  
25 people who were involved in that situation so that we can

1 develop it and do something impeachable. Something  
2 that -- I mean, if it's impeachable, something that  
3 qualifies under the rules of evidence for impeachment.

4 It's not just the information. We have to be  
5 able to follow up on it.

6 So, I understand the Court's concern for  
7 the -- and, you know, I don't -- I'm not in the Solomonic  
8 position to be able to cut that baby.

9 THE COURT: I'm going to make a decision.

10 MR. BAUGH: I know you are, Your Honor, so  
11 I'm going to --

12 THE COURT: And I've tried to give each  
13 counsel a chance to tell me something that would help me  
14 about balancing the witness security.

15 And I understand you're in a difficult place  
16 as well, and that is that you've got a client to  
17 represent. But I also have the impression that the  
18 government's turned over a lot of information already.  
19 And some of the individuals present -- I have some idea  
20 about what's going on here. It's not out of the clear  
21 blue sky. There's something going on here where  
22 information provided to you so far gives you some idea of  
23 what's coming. You have some idea of what's coming.

24 MR. BAUGH: Your Honor, there's a lot of  
25 information. And the biggest problem is whittling



1 through it. I mean, we're looking for needles in a pile  
2 of needles.

3 THE COURT: That's why I gave you almost  
4 11 months for trial.

5 MR. BAUGH: Yes, you did, Your Honor.

6 THE COURT: You've already had 4 months to go  
7 through those calls. So telling me that you won't have  
8 the calls in 11 months, I'm not going to hear any motion  
9 to continue. I've given you as much time as you're going  
10 to get in a death penalty case, and this is not a death  
11 penalty case any more.

12 MR. BAUGH: No, it's not.

13 THE COURT: Don't procrastinate, lawyers.  
14 I'm sure you're not because there won't be any  
15 continuances. We're going forward in March.

16 MR. BAUGH: That's fine. And also the  
17 earlier you give us that information, the faster the  
18 trial could go.

19 THE COURT: I'm not in any hurry about the  
20 trial days because I want you to have a chance to present  
21 your case. I understand your point, but unless there's  
22 something more, I don't have anything more I can offer  
23 you.

24 MR. BAUGH: I'm just leaning towards as much.  
25 By the way, one thing you said 90 days, at least 90 days.

1 THE COURT: Lawyers with their qualifiers,  
2 absolutely. I agree, at least.

3 Ms. Amato, you don't have to stand up, at  
4 least 90 days.

5 You do not have to stand up, Mr. Salvato, at  
6 least -- no less than -- I understand completely,  
7 including and up to business days. I got it all.

8 MR. BAUGH: Thank you.

9 MS. TAYLOR: Your Honor, Gretchen Taylor for  
10 Rosales Villegas, number four on your list.

11 THE COURT: Yes, let's take that up now.

12 MS. TAYLOR: It's pretty much a very similar  
13 issue that we were just discussing with Mr. Baugh,  
14 Document 340, my motion for production of exculpatory  
15 information. I know this is *Brady* information. I  
16 provided a very specific list.

17 And really it's to aid the government as to  
18 what things we're specifically looking for that can go to  
19 witness's credibility, bias, impeachment, all these  
20 things. I believe it all should be encompassed in *Brady*.  
21 I don't have anything to add other than a protective  
22 order I think is the best way to allay witness concerns,  
23 Your Honor.

24 THE COURT: All right, thank you.

25 All right. I believe I've now covered one,

1 two, three, four, five, six, seven, eight. I've not  
2 covered nine, ten -- nine and ten.

3 MR. CHICK: Good morning again, Your Honor.  
4 Mike Chick on behalf of Mr. Paiz Guevara. I am here on  
5 both motions nine and ten.

6 Before I get into that, just to -- on the  
7 issue that the Court is going into with respect to  
8 alleviating the concerns of security and that sort of  
9 thing, I don't know that this -- I don't know that this  
10 gives the Court a solution, but I think that it's  
11 something that the Court should also consider in  
12 determining how much time is -- is appropriate in this  
13 case.

14 And that is the -- under the particular -- I  
15 know that problems have arisen in the past, but under the  
16 particular facts of this case --

17 THE COURT: What type of problems are you  
18 referring to?

19 MR. CHICK: Problems with witness security  
20 and witness safety and that sort of things, that the  
21 Court referenced has happened in this court in the past.

22 Under this particular case, with respect to  
23 my client, Mr. Paiz Guevara, I think it is important for  
24 the Court in making that time determination to consider  
25 the fact that, number one, there's -- we know, we do know

1 of certain people who are cooperating with the government  
2 already. We know of multiple people -- at least two  
3 people, but I think more people who are cooperating with  
4 the government already.

5 And at this point, there's been certainly --  
6 and we've known some of them for quite some time. At  
7 this point, there's certainly been no evidence or  
8 suggestions of evidence of any -- anything  
9 inappropriately done by my client with respect to that  
10 information or those witnesses. I think that's something  
11 that the Court should certainly take into account with  
12 respect to this case.

13 And, the other thing is, with respect to this  
14 case, there's also absolutely no evidence that Mr. Paiz  
15 Guevara is any -- is a person within the gang who is --  
16 who's authorized to issue what they call a green light or  
17 who is authorized to make those calls.

18 There's no evidence that he's been in  
19 communication with anybody in the gang. There's no  
20 evidence that he's in fact -- in fact, there is evidence  
21 that he is not an initiated member of the gang.

22 THE COURT: Mr. Paiz Guevara is not the only  
23 person in MS-13, and I'm not saying that he is, who is  
24 accused of crimes in this case. And there are other  
25 individuals in MS-13 who still reside in our community.

1 We know that.

2 So, the point is do you have some specific  
3 suggestion? I'm listening.

4 MR. CHICK: Your Honor, I don't have a  
5 specific suggestion, but it sounds to me like the  
6 Court -- I guess we don't know yet what number the Court  
7 is landing on, and we're talking about 90 and all these  
8 kinds of things. I think those are things the Court  
9 should also take into consideration in making that  
10 determination as to what an appropriate number is.

11 THE COURT: Please know that I'm trying to be  
12 as thoughtful as I possibly can about these matters from  
13 both sides weighing and balancing the matters before the  
14 Court. And I've intentionally given the lawyers an  
15 extended period of time to prepare for trial in the case  
16 on purpose, intentionally expecting that you all will do  
17 whatever it is you need to do to be ready.

18 MR. Chick: Yes, sir. I can tell that you  
19 and we're very, very appreciative of that. And -- these  
20 cases are a lot more difficult to prepare and to  
21 investigate and to discuss, to find witnesses that we  
22 need to talk to and to go over those things. I know that  
23 there are many other --

24 THE COURT: Concerning your motion for  
25 investigative materials pertaining to Parkview Locos

1 Salvatruchas Clique MS-13, my first question is what  
2 specifically are you asking for? What is it that you  
3 want?

4 MR. CHICK: Your Honor, I know based on doing  
5 gang cases in the past that the government, including  
6 agencies that I know are working with the government,  
7 including the Fairfax County Police Department and their  
8 gang unit that is working with the government, I know  
9 that they have things such as field interview cards when  
10 they -- when they are in the field and they're doing  
11 their investigations on cases, that they've had contact  
12 with people who are involved or alleged to be involved in  
13 this case, whether they're co-defendants of Mr. Paiz  
14 Guevara, whether it's Mr. Paiz Guevara, or whether it's  
15 people who are non-charged participants in these alleged  
16 events.

17 And if there is information that the police  
18 have with respect to those people within this clique, I  
19 believe that we are entitled to it.

20 THE COURT: Incriminating information?

21 MR. CHICK: Incriminating information.  
22 Information that shows that they have different roles and  
23 involvement in the gang than my client does.

24 I believe that the evidence in this case --  
25 well, I won't go -- I'm not going to go into that, but --

1           THE COURT: I want to understand your theory  
2 of what you want the government to disclose concerning  
3 contacts with law enforcement, with other members of the  
4 MS-13 who are either before the Court or not before the  
5 Court where there's a conspiracy to commit murder in aid  
6 of racketeering charge.

7           So, what is it that you're specifically  
8 thinking that they have that you want that you're  
9 entitled to?

10          MR. CHICK: Your Honor, I believe they have  
11 information about -- about who the people are involved  
12 in -- in the alleged cases here who are higher ranks  
13 members and who are lower ranking members, who are more  
14 involved, who are not involved, who are initiated, who  
15 are not initiated and I believe that that's all  
16 information that is useful to us at trial.

17          I also believe --

18          THE COURT: I don't understand. I have a  
19 specific indictment here with specific charges. Are you  
20 suggesting that there's some unindicted co-conspirators  
21 who are higher up who were present who should be  
22 disclosed?

23          MR. CHICK: Your Honor, I think that that is  
24 a real possibility.

25          THE COURT: I'm not trying to throw theories

1 at you. I'm trying to understand yours. What is your  
2 theory?

3 MR. Chick: Your Honor, that is something  
4 that I believe is very possibly true based on what I've  
5 looked into in the case.

6 THE COURT: How would that exculpate Mr. Paiz  
7 Guevara?

8 MR. CHICK: Your Honor, one of the other  
9 things that I believe about this case is I believe the  
10 facts of the case with respect to -- to prove murder, you  
11 have to prove premeditation. And I believe that there  
12 are facts that -- to suggest that my client didn't have  
13 that premeditation.

14 THE COURT: You'll have a chance to present  
15 that in your examination of the witnesses and at trial.  
16 This is a pretrial hearing where you asked me to order  
17 the government to give you information about  
18 investigations into the PVLS Clique MS-13 as exculpatory.  
19 If you can articulate a theory under which it is  
20 exculpatory, I'll consider it. So far you have not.

21 MR. CHICK: Your Honor, I'm trying my best to  
22 articulate it.

23 THE COURT: I'm not trying to throw stumbling  
24 blocks in your mind. You filed this motion. You filed a  
25 brief. So what is it?



1 MR. CHICK: Your Honor, I believe the  
2 information that shows the comparative levels of  
3 involvement of the individuals in this case will show  
4 that my client is -- is at best, at best, a low man on  
5 the totem pole and that my client didn't even know -- he  
6 wasn't told certain information that other people  
7 certainly were told and that they knew.

8 And I think that the information I'm seeking  
9 helps to support that claim that helps support the  
10 information that we already believe we have that will  
11 show that.

12 All right.

13 MR. Chick: So that's why we're asking for  
14 it. And one other thing that I think makes it helpful to  
15 us and exculpatory is this is a little bit of a unique  
16 case in that I believe that the information they have,  
17 the general information they have on the gang itself and  
18 on the dangers of the gang and the allure of the gang and  
19 people who they believe are typically targeted to be --  
20 to join the gang, and all of those things, I believe that  
21 they're also useful to us in preparing for trial in this  
22 particular case.

23 So --

24 THE COURT: Well, the defense can hire a gang  
25 expert if you want, and the defense can identify

1 witnesses who can say that they resisted alleged attempts  
2 to entice into the gang. I -- let's move to the next  
3 motion which is presentence reports and plea agreements.

4 Now, I would be shocked if the government  
5 tried to call a witness that they had not disclosed to  
6 you the plea agreement and any monies or things they've  
7 given them.

8 So, putting that aside for a moment, what --  
9 why would you need access to the presentence report of  
10 any witness? And is there a particular witness you're  
11 thinking of?

12 MR. CHICK: Your Honor, this motion was also  
13 made under -- under *Brady* and the other relevant cases.

14 In my experience, in cases with co-defendants  
15 and in presentence reports, one of the things that is  
16 done is there's an offender's version of the facts. And  
17 I believe that the offender's motion of the facts in  
18 presentence reports that have been -- that have been done  
19 for these particular individuals will show that my  
20 client -- will show that my client -- that his level of  
21 culpability is not what the government is suggesting that  
22 it is.

23 THE COURT: All right.

24 MR. Chick: And that's why I'm asking for  
25 that. And quite honestly, I don't have any information

1 about mental health problems or any good faith basis to  
2 say that there are mental health issues that might exist.  
3 But I guess if they did, I would certainly want that.  
4 But I don't have any good faith basis for that. But I do  
5 have a good faith basis to say that I believe that those  
6 statements from the co-defendants, that they will be  
7 favorable to my client in terms of his level of  
8 culpability.

9 THE COURT: All right. Well, thank you very  
10 much, Mr. Chick.

11 MR. CHICK: Thank you, Your Honor.

12 MR. BURNHAM: Can I be heard briefly on  
13 motion number nine?

14 THE COURT: Identify yourself for the record,  
15 please.

16 MR. BURNHAM: I'm sorry. Charles Burnham for  
17 defendant Romero Cruz.

18 THE COURT: Number nine is?

19 MR. BURNHAM: Is the motion that Your Honor  
20 was just discussing with Mr. Chick about investigative  
21 materials on PVLS. I join that motion, but I have two  
22 specific points that I think applies specifically to my  
23 client.

24 The government's theory, so far as I can  
25 discern it, depends on my client not only being a member

1 of MS-13 but given the fact that he's been incarcerated  
2 at all relevant times occupying a position of some  
3 authority.

4 I think the fact that the government is  
5 proceeding under such a theory makes two specific  
6 categories of information on the Parkviews certainly  
7 material and very probably exculpatory or impeaching for  
8 Mr. Guevara, my client's perspective.

9 Those two categories are one, information  
10 tending to show that Mr. Romero Cruz did not, in fact,  
11 occupy any position of authority within MS-13. That's  
12 number one. And number two, information tending to show  
13 that other individuals occupied the positions of  
14 authority that would have been necessary to occupy in  
15 order to control the activities of the Parkview clique  
16 during the relevant time period covered by the  
17 indictment.

18 We'd ask the Court to order the government to  
19 turn over any materials on the Parkviews from local  
20 police, from any -- I think that clearly they're required  
21 to conduct *Brady* review that includes the Prince William  
22 County, Fairfax Police Department and turn over any  
23 information responsive to those two requests.

24 THE COURT: All right. So your point is that  
25 Mr. Cruz allegedly was in jail at the time all these

1 things took place --

2 MR. BURNHAM: Yes.

3 THE COURT: -- and was not a leader or a  
4 supervisor in the organization so would not have had any  
5 involvement in the conspiracy; is that right?

6 MR. BURNHAM: Yes.

7 THE COURT: All right. Let me hear from the  
8 government.

9 MR. BURNHAM: Thank you, Your Honor.

10 MR. TOBLER: Thank you, Your Honor. If I  
11 may, I'll begin by responding to the issue of timing with  
12 respect to this disclosures of *Giglio* and *Jencks* and  
13 *Brady*.

14 THE COURT: If you would focus on this first.  
15 We'll go back to that.

16 MR. TOBLER: I can, of course. I'd like to  
17 frame this issue about the PVLS materials just by citing  
18 a few basic principles of discovery.

19 The government is not required to disclose  
20 all evidence -- it doesn't have a duty to disclose any  
21 exculpatory evidence that's available within the  
22 possession or within its reach. The government simply  
23 doesn't have that responsibility, nor does it --

24 THE COURT: Say that again. Repeat what you  
25 just said.

1 MR. TOBLER: The government's not required to  
2 divulge every possible shred of evidence that could  
3 conceivably benefit the defendant, nor does our duty to  
4 disclose exculpatory evidence require us to make  
5 available all evidence within the government's possible  
6 reach.

7 And, I believe that the defendant's  
8 request --

9 THE COURT: This is evidence that's within  
10 the government's possession; is that right?

11 MR. TOBLER: No, of course, all evidence  
12 within the government's possession, the investigating  
13 agencies that is exculpatory needs to be disclosed to the  
14 defense, Your Honor.

15 THE COURT: All right.

16 MR. TOBLER: But I believe that the  
17 defendant's request runs afoul of both of these  
18 principles.

19 First, the request is potentially staggering  
20 in its scope and would require the government to  
21 potentially amass a tremendous amount of information.

22 PVLS, Your Honor, is not merely a local  
23 clique. It has a presence throughout the United States  
24 and Central America.

25 And as Your Honor is well aware, the Federal

1 Bureau of Investigations which is an investigating agency  
2 in this case, and Homeland Security, are not local law  
3 enforcement agencies.

4               Nevertheless, the defendant seeks  
5 essentially, if you look at their motion, all law  
6 enforcement investigative materials in possession of  
7 these agencies that relate to the PVLS clique of MS-13.  
8 This is far, far beyond what relevant discovery  
9 authorities require.

10              And none of the defendants, Your Honor,  
11 respectfully have cited any case in which the government  
12 has had that sort of duty to go out and collect these  
13 vast troves of information on behalf of defendants.

14              And not only that, Your Honor, as we pointed  
15 out in our papers, even assuming we could pull all those  
16 materials together from all corners, it would implicate  
17 grave security concerns as those documents that they  
18 request are undoubtedly replete with information about  
19 victims --

20              THE COURT: The question has to be one of  
21 relevance in the instance to this indictment as it  
22 relates to PVLS. I understand that.

23              What is your view concerning the issue of  
24 whether Mr. Cruz was a leader or organizer of this  
25 alleged PVLS clique and evidence that he was not -- that

1 the government has that he was not the boss or that he  
2 was not the leader? You would agree that if you have  
3 evidence that he was not the boss or not the leader, you  
4 would have to disclose that as exculpatory, wouldn't you?

5 MR. TOBLER: We would. If I may, our about  
6 opposition is to this requirement that we go out and  
7 collect data about PVLS generally.

8 THE COURT: I understand. My focus -- my  
9 question was as it relates to his leadership, Mr. Cruz's  
10 leadership of this alleged clique that's involved in the  
11 allegations of the indictment.

12 You agree that if there's evidence you have  
13 from any officer or witness that Mr. Cruz was not the  
14 boss or the supervisor, it's exculpatory, and you'd have  
15 to disclose it, right?

16 MR. TOBLER: Yes, Your Honor.

17 THE COURT: Okay.

18 MR. TOBLER: And just making the point, I  
19 believe, Your Honor has already alluded to it yourself,  
20 but, whether these exculpatory materials, these quote  
21 unquote exculpatory materials relating to parallel  
22 investigations from presumably any where in the United  
23 States or Central America can be used to differentiate  
24 the culpability of one defendant versus the next, there's  
25 no authority requiring us to go out and collect that



1 information.

2 And Your Honor, you heard Mr. Baugh himself  
3 say that there's a lot of information already in this  
4 case and we're winnowing through it.

5 And I would just also add, under the rules of  
6 evidence, information about parallel cases would not in  
7 the government's estimation be admissible under Rule 401  
8 as relevant, nor would it be admissible under Rule 403.

9 So, that I wish to make those points about  
10 the breadth of that motion. And I'm happy to continue to  
11 the next motion if you'd like.

12 THE COURT: Well, I just wanted to say it  
13 does not appear that there's a specific request for  
14 access to a specific presentence report.

15 However, if there is a government witness who  
16 has some issue involving mental health bearing on  
17 truthfulness or addictions that bear on truthfulness, do  
18 you agree you'd have to disclose that?

19 MR. TOBLER: We do, Your Honor.

20 THE COURT: All right. Tell me -- now turn  
21 to what you want to talk about which is when. Now, I  
22 have the government's proposed order which is document  
23 number 439-1 that you all filed back in August. And I  
24 think you all make some specific offers in that motion --  
25 in that order, but all the defendants rejected it. And

1 so I understand that. That order only gave them ten days  
2 on *Jencks* and -- ten business days. And I think that  
3 that is really insufficient. But you have 30 calendar  
4 days for others.

5 Tell me what you -- what do you propose --  
6 what's the government's prepared to offer?

7 MR. TOBLER: Yes, Your Honor, we believe that  
8 the proposal, proposed discovery order that you alluded  
9 to is fair and will give the defendants sufficient time  
10 to prepare for trial.

11 As -- as several of the defendants mentioned  
12 today, Your Honor entered an order last Friday addressing  
13 the issue of -- the defendants sought citing many of the  
14 same arguments that you've heard today, the immediate  
15 disclosure of the identity of confidential informants.  
16 And the government opposed it on the grounds that we  
17 would oppose these motions as well, early disclosure,  
18 that is. And that is that we are attempting, as the  
19 Court has alluded to, to balance some very serious safety  
20 concerns.

21 Our proposal is that 30 days for exculpatory  
22 materials, ten days for impeachment materials and *Jencks*  
23 is sufficient. And that tracks not only the --

24 THE COURT: Thirty business days or 30 days  
25 before trial? I think you've --

1 MR. TOBLER: Days, Your Honor, calendar days,  
2 Your Honor.

3 THE COURT: Calendar days, okay.

4 MR. TOBLER: And we believe that not only  
5 tracks the order that Your Honor entered last Friday, but  
6 it does also track the case of *Beckford* in which there  
7 was -- the analogous case, Your Honor, cited by the  
8 defendants as well as the government, is a capital case  
9 involving multiple defendants.

10 And there the Court gave the parties only  
11 three days, required the government to produce  
12 impeachment materials and witness statements, including  
13 exculpatory information only three days before beginning  
14 of trial.

15 So the proposal that the government has made  
16 is actually more generous to the defense than what the  
17 Court found suitable in that case.

18 I would also mention, Your Honor, in that  
19 case, there is a reference -- the judge in *Beckford* case  
20 made a reference, in fact, that there might be certain  
21 types of exculpatory materials that he referred to as  
22 quote unquote "facially exculpatory", including alibi  
23 evidence and evidence that someone other than the  
24 defendants that were charged with the offense might have  
25 committed the charged offense.

1                   And even with respect to that information,  
2                   which the Court allowed may require that -- may need to  
3                   go out to the defendants earlier to allow them to conduct  
4                   the type of investigation that Mr. Baugh referred to, the  
5                   Court gave them 30 days in that case.

6                   Now the government, I can represent does  
7                   not -- is not currently aware of any of that type of  
8                   facially exculpatory evidence in this case.  
9                   Nevertheless, we have put forward 30 days as a deadline  
10                  for exculpatory information.

11                  We think that that's fair and we're willing  
12                  to abide by it, Your Honor.

13                  THE COURT: Are you willing, with respect to  
14                  law enforcement witnesses on *Giglio*, go earlier than ten  
15                  days?

16                  MR. TOBLER: Yes, Your Honor. Again, we  
17                  would ask for ten days. But we recognize the arguments  
18                  that have been made today, and we think that -- we  
19                  appreciate that the safety concerns with respect to that  
20                  sort of evidence, assuming there is any, are of a  
21                  different nature to the United States.

22                  THE COURT: All right. That's all I have. I  
23                  think I've covered now --

24                  MR. TOBLER: Thank you.

25                  THE COURT: -- all eleven motions on the

1 list.

2 Does everyone who wanted to be heard, has  
3 been heard?

4 MR. BAUGH: As counsel in the *Beckford*  
5 case --

6 THE COURT: Come to the podium if you will.  
7 I'm going to take a recess and come back and give you  
8 some further direction, but come up.

9 MR. BAUGH: You can take the recess first.

10 THE COURT: If you have something you want to  
11 say -- Mr. Baugh, you have to state your name for the  
12 record.

13 MR. BAUGH: I'm sorry. David Baugh for the  
14 defendant, Paiz Guevara.

15 One of the problems with *Beckford* which was  
16 cited by the United States is that in the *Beckford* case,  
17 the trial judge in that case, when he said impeachment,  
18 and he points it out, he's talking about convictions. He  
19 didn't understand that impeachment can be more than a  
20 conviction. And so, we are asking for more.

21 Secondly, I want to point out and I don't  
22 mean to tax you. I think when my co-counsel asked for  
23 investigative materials pertaining to Salvatruchas, I  
24 know from my experience and maybe in other cases, this  
25 Court is too, your local police will walk up on a group

1 of young Hispanic men and take pictures and check their  
2 tattoos and ask them who they are. And there are  
3 intelligent files in local police on various cliques.

4 If there is an intelligence file that  
5 indicates that some of these people are not in that file,  
6 we would submit that that's -- that intelligence file  
7 should be turned over to us.

8 THE COURT: I want to make sure I'm clear  
9 what you're saying.

10 MR. BAUGH: Thank you.

11 THE COURT: If law enforcement have had  
12 contacts with members of MS-13 they think are PVLS --

13 MR. BAUGH: Yes.

14 THE COURT: -- and going through their index,  
15 Mr. Paiz Guevara's name does not appear, they have an  
16 obligation to disclose that? Is that what you're saying?

17 MR. BAUGH: I believe they are. If they have  
18 intelligence files of my client or any other client is  
19 not in their intelligence file as being a probable or  
20 plausible member, we should be tendered that as *Brady*.

21 THE COURT: All right. I'm going to take  
22 about a 15-minute recess and come back and give you  
23 further instructions.

24 Thank you very much.

25 MR. BAUGH: Thank you, Your Honor.

1 (Court recessed at 11:38 a.m. and reconvened  
2 at 12:00 p.m.)

3 THE COURT: Counsel, I've now considered all  
4 of the pending non-evidentiary motions that are not  
5 subject of my prior order. Given the complexity of the  
6 case and the motions, my plan is to issue a written  
7 ruling in due course which will be in the next several  
8 weeks on all the pending motions in writing.

9 So, to be clear, I'm going to issue a written  
10 ruling to all the motions that have been filed.

11 I just want to make an observation. This is  
12 not to be interpreted as a complaint. It's an  
13 observation.

14 We have interpreters for all the lawyers in  
15 the case. And interpreters can certainly be used to  
16 interpret orders that you might receive from the court.  
17 I would caution you not to order the interpreters to  
18 translate in writing and to prepare a written translation  
19 of all the orders of the court, typically court orders.  
20 It's very, very costly.

21 And, it is better to have the interpreter  
22 just sit down with you and your client to go over the  
23 orders. So that's just some guidance for counsel and for  
24 the interpreters as well.

25 So, my plan, to be clear, is to issue a

1 written ruling on all the pending motions. And what I'd  
2 like to do now is to recess this case, except for  
3 Mr. Chavez and counsel for the government. So you all  
4 are free to leave.

5 (Proceeding concluded at 12:01 p.m.)  
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## 1 CERTIFICATE OF REPORTER

2  
3 I, Renecia Wilson, an official court  
4 reporter for the United State District Court of Virginia,  
5 Alexandria Division, do hereby certify that I reported by  
6 machine shorthand, in my official capacity, the  
7 proceedings had upon the motions in the case of United  
8 States of America vs. Pedro Anthony Romero Cruz, et al.

9 I further certify that I was authorized and  
10 did report by stenotype the proceedings and evidence in  
11 said motions, and that the foregoing pages, numbered 1 to  
12 72, inclusive, constitute the official transcript of said  
13 proceedings as taken from my shorthand notes.

14 IN WITNESS WHEREOF, I have hereto subscribed  
15 my name this 14th day of December, 2015.

16  
17 /s/  
18 Renecia Wilson, RMR, CRR  
19 Official Court Reporter  
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